

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS

PART 1

INTESTATE SUCCESSION

700.2101 Intestate estate.

Sec. 2101. (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will.

(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent that passes by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his or her intestate share.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2102 Share of spouse.

Sec. 2102. (1) The intestate share of a decedent's surviving spouse is 1 of the following:

(a) The entire intestate estate if no descendant or parent of the decedent survives the decedent.

(b) The first \$150,000.00, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.

(c) The first \$150,000.00, plus 3/4 of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.

(d) The first \$150,000.00, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has 1 or more surviving descendants who are not descendants of the decedent.

(e) The first \$150,000.00, plus 1/2 of any balance of the intestate estate, if 1 or more, but not all, of the decedent's surviving descendants are not descendants of the surviving spouse.

(f) The first \$100,000.00, plus 1/2 of any balance of the intestate estate, if none of the decedent's surviving descendants are descendants of the surviving spouse.

(2) Each dollar amount listed in subsection (1) shall be adjusted as provided in section 1210.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2103 Share of heirs other than surviving spouse.

Sec. 2103. Any part of the intestate estate that does not pass to the decedent's surviving spouse under section 2102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:

(a) The decedent's descendants by representation.

(b) If there is no surviving descendant, the decedent's parents equally if both survive or to the surviving parent.

(c) If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation.

(d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by 1 or more grandparents or descendants of grandparents, 1/2 of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other 1/2 passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the 1/2.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2104 Requirement that heir survive decedent for 120 hours.

Sec. 2104. An individual who fails to survive the decedent by 120 hours is considered to have predeceased

the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section does not apply if its application would result in a taking of the intestate estate by the state under section 2105.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2105 No taker; effect.

Sec. 2105. If there is no taker under the provisions of this article, the intestate estate passes to this state.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2106 Representation.

Sec. 2106. (1) If, under section 2103(a), a decedent's intestate estate or a part of the estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as the total of the surviving descendants in the generation nearest to the decedent that contains 1 or more surviving descendants and the deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(2) If, under section 2103(c) or (d), a decedent's intestate estate or a part of the estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as the total of the surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains 1 or more surviving descendants and the deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(3) As used in this section:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under section 2104.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under section 2104.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2107 Relative of half blood.

Sec. 2107. A relative of the half blood inherits the same share he or she would inherit if he or she were of the whole blood.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2108 Afterborn heirs.

Sec. 2108. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2109 Advancements.

Sec. 2109. (1) If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only under either of the following circumstances:

(a) The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is

an advancement.

(b) The decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For purposes of subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3) If the recipient of property advanced fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2110 Debts to decedent.

Sec. 2110. A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2111 Alienage.

Sec. 2111. An individual is not disqualified to take as an heir because the individual or an individual through whom he or she claims is or has been an alien.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2113 Individuals related to decedent through two lines.

Sec. 2113. An individual who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2114 Parent and child relationship.

Sec. 2114. (1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's natural father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) The man is determined to be the father in an action under the revocation of paternity act.

(c) A child who is not conceived or born during a marriage is an individual born in wedlock if the child's

parents marry after the conception or birth of the child.

(2) An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents, but adoption of a child by the spouse of either natural parent has no effect on either the relationship between the child and that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent. An individual is considered to be adopted for purposes of this subsection when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed.

(3) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

(4) Inheritance from or through a child by either natural parent or his or her kindred is precluded unless that natural parent has openly treated the child as his or hers, and has not refused to support the child.

(5) Only the individual presumed to be the natural parent of a child under subsection (1)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2012, Act 160, Imd. Eff. June 12, 2012.

Popular name: EPIC

PART 2 ELECTIVE SHARE OF SURVIVING SPOUSE

700.2201 Surviving spouse's right to elective share.

Sec. 2201. Subject to sections 2203 to 2205, upon an individual's death, the individual's surviving spouse has the right described by section 2202.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2202 Election of surviving spouse.

Sec. 2202. (1) The surviving widow of a decedent who was domiciled in this state and who dies intestate may file with the court an election in writing that she elects to take 1 of the following:

(a) Her intestate share under section 2102.

(b) Her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(2) The surviving spouse of a decedent who was domiciled in this state and who dies testate may file with the court an election in writing that the spouse elects 1 of the following:

(a) That the spouse will abide by the terms of the will.

(b) That the spouse will take 1/2 of the sum or share that would have passed to the spouse had the testator died intestate, reduced by 1/2 of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death.

(c) If a widow, that she will take her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(3) The surviving spouse electing under subsection (1) is limited to 1 choice. Unless the testator's will plainly shows a contrary intent, the surviving spouse electing under subsection (2) is limited to 1 choice. The right of election of the surviving spouse must be exercised during the lifetime of the surviving spouse. The election must be made within 63 days after the date for presentment of claims or within 63 days after service of the inventory upon the surviving spouse, whichever is later.

(4) Notice of right of election shall be served upon the decedent's spouse, if any, as provided in section 3705(5), and proof of that notice shall be filed with the court. An election as provided by this section may be filed instead of service of notice and filing of proof.

(5) In the case of a legally incapacitated person, the right of election may be exercised only by order of the court in which a proceeding as to that person's property is pending, after finding that exercise is necessary to provide adequate support for the legally incapacitated person during that person's life expectancy.

(6) The surviving spouse of a decedent who was not domiciled in this state is entitled to election against the intestate estate or against the will only as may be provided by the law of the place in which the decedent was domiciled at the time of death.

(7) As used in subsection (2), “property derived by the spouse from the decedent” includes all of the following transfers:

(a) A transfer made within 2 years before the decedent's death to the extent that the transfer is subject to federal gift or estate taxes.

(b) A transfer made before the date of death subject to a power retained by the decedent that would make the property, or a portion of the property, subject to federal estate tax.

(c) A transfer effectuated by the decedent's death through joint ownership, tenancy by the entireties, insurance beneficiary, or similar means.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2203 Failure to timely elect; exceptions.

Sec. 2203. If a surviving spouse fails to make an election within the time specified in section 2202, it is conclusively presumed that an intestate decedent's widow elects her intestate share or that a testate decedent's spouse elects to abide by the terms of the will, except in either of the following instances:

(a) If an election is not made and the principal administration is closed, and if after that administration is closed it appears to the court that assets belonging to the estate are discovered and administration is granted, the election may be made out of the newly discovered assets only upon good cause shown at any time before that administration is closed.

(b) Before the estate is closed, upon petition of the spouse and after notice to all interested persons, the court may permit the spouse to make an election to which the spouse was entitled as though the spouse had done so within the time specified in section 2202, if the court considers it proper on account of litigation connected with the estate or the establishment of further claims against the deceased, or for other cause. The court shall limit the time within which the spouse may make an election under this subdivision.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2204 Actions not preventing election.

Sec. 2204. Filing of a petition to admit the will of a deceased spouse, failing to object or consenting to admission of the will to probate, or accepting appointment as a personal representative does not prevent a surviving spouse's election to take against the will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2205 Waiver of rights by surviving spouse.

Sec. 2205. The rights of the surviving spouse to a share under intestate succession, homestead allowance, election, dower, exempt property, or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of “all rights” in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separate maintenance is a waiver of all rights to homestead allowance, election, dower, exempt property, and family allowance by the spouse in the property of the other and is an irrevocable renunciation by the spouse of all benefits that would otherwise pass to the spouse from the other spouse by intestate succession or by virtue of a will executed before the waiver or property settlement.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2206 Pre-existing right not created.

Sec. 2206. Sections 2201 to 2205 shall not be construed as creating an inchoate or choate right to the rights described in those sections in the property of a spouse before the death of a spouse.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 3

SPOUSE OR CHILD NOT PROVIDED FOR IN THE WILL

700.2301 Entitlement of spouse; premarital will.

Sec. 2301. (1) Except as provided in subsection (2), if a testator's surviving spouse marries the testator

after the testator executes his or her will, the surviving spouse is entitled to receive, as an intestate share, not less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is not any of the following:

(a) Property devised to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child.

(b) Property devised to or in trust for the benefit of a descendant of a child described in subdivision (a).

(c) Property that passes under section 2603 or 2604 to a child described in subdivision (a) or to a descendant of such a child.

(2) Subsection (1) does not apply if any of the following are true:

(a) From the will or other evidence, it appears that the will was made in contemplation of the testator's marriage to the surviving spouse.

(b) The will expresses the intention that it is to be effective notwithstanding a subsequent marriage.

(c) The testator provided for the spouse by transfer outside the will, and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child or a devise or substitute gift under section 2603 or 2604 to a descendant of such a child, abate as provided in section 3902.

(4) A spouse who receives an intestate share under this section may also exercise the right of election under section 2202, but the intestate share received by the spouse under this section reduces the sum available to the spouse under section 2202(2)(b).

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.2302 Omitted children.

Sec. 2302. (1) Except as provided in subsection (2), if a testator fails to provide in his or her will for a child of the testator born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as provided in 1 of the following:

(a) If the testator had no child living when he or she executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had 1 or more children living when he or she executed the will, and the will devised property or an interest in property to 1 or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate subject to all of the following:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subdivision, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsection (1) does not apply if either of the following applies:

(a) It appears from the will that the omission was intentional.

(b) The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by subsection (1)(a), devises made by the will abate under section 3902.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 4 EXEMPT PROPERTY AND ALLOWANCES

700.2401 Applicable law.

Sec. 2401. This part applies to the estate of a decedent who dies domiciled in this state. For a decedent who dies domiciled outside of this state, rights to homestead allowance, family allowance, and exempt property are governed by the law of the decedent's domicile at death.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2402 Homestead allowance.

Sec. 2402. A decedent's surviving spouse is entitled to a homestead allowance of \$15,000.00, adjusted as provided in section 1210. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance equal to \$15,000.00, adjusted as provided in section 1210, divided by the number of the decedent's minor and dependent children. The homestead allowance is exempt from and has priority over all claims against the estate, except administration costs and expenses and reasonable funeral and burial expenses. A homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by elective share.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.2403 Family allowance.

Sec. 2403. (1) For their maintenance during the period of administration, a reasonable family allowance is payable to the decedent's surviving spouse and minor children whom the decedent was obligated to support, and children of the decedent or another who were in fact being supported by the decedent, which allowance shall not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The family allowance may be paid in a lump sum or in periodic installments. The family allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be paid partially to the child or to a fiduciary or other person having the child's care and custody, and partially to the spouse, as their needs may appear.

(2) The family allowance is exempt from and has priority over all claims except administration costs and expenses, reasonable funeral and burial expenses, and the homestead allowance. The family allowance is not chargeable against a benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of an individual entitled to family allowance terminates the right to allowances not yet paid.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.2404 Exempt property.

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed \$10,000.00 more than the amount of any security interests to which the property is subject. If there is no surviving spouse, the decedent's children are entitled jointly to the same value.

(2) If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than \$10,000.00, or if there is not \$10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

- (a) Administration costs and expenses.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The \$10,000.00 amount expressed in this section shall be adjusted as provided in section 1210.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.2405 Selection, determination, and documentation.

Sec. 2405. (1) If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, fiduciaries or others that have the care and custody of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property.

(2) The personal representative may make those selections if the surviving spouse, the adult children, or those acting for the minor children are unable or fail to do so within a reasonable time. The personal representative may execute a deed of distribution or other instrument to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding \$18,000.00, adjusted as provided in section 1210, or periodic installments not exceeding 1/12 of that amount per month for 1 year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash.

(3) The personal representative or an interested person aggrieved by a selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 5

WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

700.2501 Will; maker; sufficient mental capacity.

Sec. 2501. (1) An individual 18 years of age or older who has sufficient mental capacity may make a will.

(2) An individual has sufficient mental capacity to make a will if all of the following requirements are met:

(a) The individual has the ability to understand that he or she is providing for the disposition of his or her property after death.

(b) The individual has the ability to know the nature and extent of his or her property.

(c) The individual knows the natural objects of his or her bounty.

(d) The individual has the ability to understand in a reasonable manner the general nature and effect of his or her act in signing the will.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2502 Execution; witnessed wills; holographic wills.

Sec. 2502. (1) Except as provided in subsection (2) and in sections 2503, 2506, and 2513, a will is valid only if it is all of the following:

(a) In writing.

(b) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.

(c) Signed by at least 2 individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting.

(3) Intent that the document constitutes a testator's will can be established by extrinsic evidence, including, for a holographic will, portions of the document that are not in the testator's handwriting.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2503 Writings intended as wills.

- (a) The decedent's will.
- (b) A partial or complete revocation of the decedent's will.
- (c) An addition to or an alteration of the decedent's will.
- (d) A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the decedent's will.

Popular name: EPIC

The State of _____
County of _____

We, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached will, sign this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the will's testator executed the will as his or her will, signed it willingly or willingly directed another to sign for him or her, and executed it as his or her voluntary act for the purposes expressed in the will; each witness, in the testator's presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this will.

(Signature) Testator

(Signature) Witness

(Signature) Witness

Sworn to and signed in my presence by _____, the
testator, and sworn to and signed in my presence by
_____ and _____, witnesses, on
_____, _____,
month/day year.

(SEAL) Signed

(official capacity of officer)

(3) A codicil to a will may be simultaneously executed and attested, and both the codicil and the original will made self-proved, by acknowledgment of the codicil by the testator and by witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is a codicil to my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this codicil; and that I am 18 years of age or older, and under no constraint or undue influence; and that I have sufficient mental capacity to make this codicil.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as a codicil to his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this codicil; each of us, in the testator's

presence, signs this codicil as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this codicil.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on

_____,
month/day year

(SEAL) Signed

(official capacity of officer)

(4) If necessary to prove the will's due execution, a signature affixed to a self-proving sworn statement attached to a will is considered a signature affixed to the will.

(5) Instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed in subsections (1) to (3), a will or codicil may be made self-proved by a written statement that is not a sworn statement. This statement shall state, or incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed in subsections (1) to (3). The testator and witnesses shall sign the statement, which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law of the state of Michigan that..."

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2505 Witnesses.

Sec. 2505. (1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2506 Choice of law as to execution.

Sec. 2506. A written will is valid if executed in compliance with section 2502 or 2503, with the law at the time of execution of the place where the will is executed, or with the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2507 Revocation by writing or by act.

Sec. 2507. (1) A will or a part of a will is revoked by either of the following acts:

(a) Execution of a subsequent will that revokes the previous will or a part of the will expressly or by inconsistency.

(b) Performance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or a part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subdivision, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or a part of the will. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touches any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a

previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked, and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will, and each will is fully operative on the testator's death to the extent they are not inconsistent.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2508 Revocation by change of circumstances.

Sec. 2508. Except as provided in sections 2802 to 2809, a change of circumstances does not revoke a will or a part of a will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2509 Revival of revoked will.

Sec. 2509. (1) If a subsequent will that wholly revoked a previous will is later revoked by a revocatory act under section 2507(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is later revoked by a revocatory act under section 2507(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is later revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2510 Incorporation by reference.

Sec. 2510. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2511 Testamentary additions to trusts.

Sec. 2511. (1) A will may validly devise property to the trustee of a trust established or to be established in any of the following manners:

(a) During the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts.

(b) At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the trust corpus.

(2) A devise described in subsection (1) is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death. Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a trust created by the will of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including an amendment to the trust made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2512 Events of independent significance.

Sec. 2512. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2513 Separate writing identifying devise of certain types of tangible personal property.

Sec. 2513. Whether or not the provisions relating to a holographic will apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be either in the testator's handwriting or signed by the testator at the end, and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2514 Contracts concerning succession.

Sec. 2514. (1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:

- (a) Provisions of a will stating material provisions of the contract.
- (b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.
- (c) A writing signed by the decedent evidencing the contract.
- (2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2515 Deposit of will with court in testator's lifetime.

Sec. 2515. (1) A will in writing that is enclosed in a sealed wrapper, on which is endorsed the testator's name, place of residence, and social security number or state of Michigan driver's license number, if any, and the day on which and the name of the person by whom it is delivered, may be deposited by the individual making the will, or by a person for him or her, with the court in the county where the testator resides. The court shall receive and safely keep the will and give a certificate of the deposit of the will. For this service, the court shall charge and collect a fee as provided by supreme court rule or the revised judiciary act of 1961.

(2) During the lifetime of the testator, the will shall be delivered only to the testator, or to some person authorized by the testator in writing that is duly proved by the oath of a subscribing witness. After the death of the testator and at the first session of the court after the court receives notice of the testator's death, the will shall be publicly opened and retained by the court.

(3) After the death of the testator, if jurisdiction of the will for probate belongs to a court in another county, upon request of the personal representative named in the will or another person interested in its provisions, the will shall be forwarded by registered mail to the other court or delivered to the personal representative, or to some other person interested in the provisions of the will, to be presented for probate in the other court.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2516 Delivery of will or codicil by custodian.

Sec. 2516. A custodian of a will or codicil or person having possession or care of a will or codicil shall forward it to the court having jurisdiction with reasonable promptness after the death of the testator either by delivering it personally or by sending it properly addressed by registered mail. A person who neglects to perform this duty without reasonable cause is liable for damages that are sustained by the neglect. A person who willfully refuses or fails to deliver a will or codicil after being ordered by the court in a proceeding brought for the purpose of compelling delivery is guilty of contempt of court and subject to the penalty for contempt.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2517 Opening of safe deposit box.

Sec. 2517. (1) In the estate of a decedent who died before October 1, 1993, the following apply to the opening of a safe deposit box:

(a) A safe deposit box of which the decedent was an individual or joint lessee may be opened following the decedent's death only upon compliance with the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256.

(b) A safe deposit box of the decedent who was an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary in a like manner as provided by the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256, as it relates to deceased individuals.

(2) In the estate of a decedent who dies after September 30, 1993, the following apply to the opening of a safe deposit box:

(a) Whenever it appears to the court by petition of an interested person that a safe and collateral deposit company, trust company, corporation, bank, or other institution has leased to a decedent, either as an individual or joint lessee, a safe deposit box in the county in which the probate court has jurisdiction and that the safe deposit box may contain a will of the decedent or a deed to a burial plot in which the decedent is to be interred, the court may issue an order directing the institution to permit the person named in the order to examine the safe deposit box in the presence of an officer or other authorized employee of the institution. If a paper purporting to be a will of the decedent or a deed to a burial plot is found in the box, the person named in the order shall deliver the will or deed to the probate register or his or her deputy. The probate register or his or her deputy shall furnish a receipt to the person named in the order. An item contained in the safe deposit box other than the will or deed shall not be removed from the safe deposit box. At the time of the opening of the safe deposit box, all individuals in attendance shall execute a written statement certifying whether a will or deed to a burial plot is found and that no other items are removed, which statement shall be delivered within 7 days after execution to the probate register or his or her deputy. Before the court enters the order, there shall be paid to the probate register a fee of \$10.00, which shall be credited to the general fund of the county. If the decedent's estate is administered in a probate court in the state, the party making payment of the fee may file a claim in the estate for that amount, which shall be charged as a cost of administration.

(b) The safe deposit box of an individual who is an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary and its contents removed. If the safe deposit box is jointly leased, then the fiduciary may examine the safe deposit box only in the presence of an officer or other authorized employee of the safe deposit and collateral company, trust company, corporation, bank, or other institution. At the time of the opening of the safe deposit box, all individuals in attendance shall execute a written statement certifying as to what is removed from the box by the fiduciary. The fiduciary shall serve a copy of that statement on the other joint lessees within 7 days after removing the items.

(c) Notwithstanding another provision of this section, a surviving joint lessee of a joint safe deposit box has full access to the safe deposit box.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 177, Imd. Eff. June 20, 2000.

Popular name: EPIC

700.2518 Penalty clause for contest.

Sec. 2518. A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2519 Statutory will.

Sec. 2519. (1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1. An individual age 18 or older who has sufficient mental capacity may make a will.
2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory

will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.

3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.

4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.

5. This will is not designed to reduce estate taxes.

6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.

7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file this will in your county's probate court for safekeeping. You should tell your family where the will is kept.

8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF _____
(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils.

I live in _____ County, Michigan.

My spouse is _____.

(Insert spouse's name or write "none")

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1 person or charity here):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

Full name and address of person or charity to receive cash gift
(Name only 1 person or charity):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding

gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

(Your signature)

ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate _____
(Insert name of person or eligible financial institution)
of _____ to serve as personal representative.

(Insert address)

If my first choice does not serve, I nominate _____

(Insert name of person or eligible financial institution)
of _____ to serve as personal representative.
(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of mine, I nominate _____

(Insert name of individual)
of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)
of _____ to serve as conservator.
(Insert address)

If my first choice cannot serve, I nominate _____

(Insert name of individual)
of _____ as guardian and
(Insert address)

(Insert name of individual or eligible financial institution)
of _____ to serve as conservator.
(Insert address)

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve with bond.

(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on _____, 20____.

(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to have sufficient mental capacity to make this will and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

(Print Name)

(Signature of witness)

(Address)

(City)

(State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City)

(State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City)

(State) (Zip)

DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

(a) "Assets" means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.

(b) "Descendants" means your children, grandchildren, and their descendants.

(c) "Descendants" or "children" includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.

(d) "Jointly held assets" means those assets to which ownership is transferred automatically upon the death

of 1 of the owners to the remaining owner or owners.

(e) "Spouse" means your husband or wife at the time you sign this will.

(f) Whenever a distribution under a Michigan statutory will is to be made to an individual's descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.

(g) "Heirs" means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws that are then in effect.

(h) "Person" includes individuals and institutions.

(i) Plural and singular words include each other, where appropriate.

(j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in good faith exercise of the person's powers.

ADDITIONAL CLAUSES

Powers of personal representative

1. A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent funds are not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.

2. The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to the minor's conservator or, in amounts not exceeding \$5,000.00 per year, either to the minor, if married; to a parent or another adult with whom the minor resides and who has the care, custody, or control of the minor; or to the guardian. The personal representative is free of liability and is discharged from further accountability for distributing assets in compliance with the provisions of this paragraph.

POWERS OF GUARDIAN AND CONSERVATOR

A guardian named in this will has the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will has all of the powers conferred by law.

History: 1998, Act 386, Eff. Apr. 1, 2000;—2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2009, Act 46, Eff. Apr. 1, 2010;—Am. 2010, Act 325, Eff. Apr. 1, 2010.

Compiler's note: As to actions taken with respect to a clerical error detected in Enrolled Senate Bill No. 1045 filed with the Secretary of State on March 30, 2000, see the following correspondence:

"September 14, 2000

"Secretary of State Candice Miller

"Department of State

"Treasury Building

"430 W. Allegan

"Lansing, MI 48918-9900

"Dear Secretary Miller:

"The purpose of this letter is to document the action I am taking in order to correct a clerical error recently detected in Enrolled Senate Bill 1045. I signed this bill on March 29, 2000. It was filed with the Secretary of State on March 30, 2000, and assigned Public Act Number 54 of 2000. This legislation made various, largely technical amendments to the Estates and Protected Individuals Code that, having been given immediate effect, took effect on April 1, 2000.

"The Secretary of the Senate and the Clerk of the House re-presented a corrected version of Enrolled Senate Bill 1045 to me on September 11, 2000, along with the accompanying letter. Apparently, a clerical error was made during the enrollment process. Specifically, Section 2519, which updated the year '19 __' to '20__' on the Michigan statutory will form was inadvertently omitted from the bill. During the 6 months this error remained undetected, an unknown and unknowable number of persons may have relied on its provisions, all but one of which are unaffected by this correction which, in effect, makes a century date change.

"The Secretary of the Senate and the Clerk of the House have recommended that I now re-sign a corrected version to be assigned the same date and public act number of the originally signed bill. Michigan case law supports this recommended procedure due to the fact that the omission was a 'clerical mistake' that dealt with a non-substantive provision of the bill.

"As the court held in Board of Control v Auditor General, 149 Mich 386, 388 (1907), '(an) omission in the enrolled bill of words not essential to its substance or effect will not render the act invalid.' Similar decisions can be found in more recent court opinions. Beacon Club v Kalamazoo Sheriff, 332 Mich 412 (1952).

"Therefore, I have affixed the revised enrolled bill with the same date as the date of my original signature. In addition, it is my expectation that the corrected enrolled bill will receive Public Act Number 54 of 2000.

"Sincerely,

"John Engler

"Governor

"cc: Michigan State Senate
"Michigan House of Representatives"
"September 10, 2000
"The Honorable John Engler
"Capitol Building
"Lansing, Michigan 48913
"Subject: PA 54 of 2000
"Dear Governor Engler:

"A clerical error has been detected in Enrolled Senate Bill 1045, which was filed with the Secretary of State on March 30, 2000, and assigned Public Act No. 54 of 2000. The bill presented to you on March 29, 2000, did not accurately reflect what was agreed to by both houses of the Legislature. Specifically, Section 2519, which updated the year from '19 __' to '20__' on the Michigan statutory will form was inadvertently omitted from the bill.

"Therefore, we are presenting a correct Enrolled Senate Bill for your signature and filing with the Secretary of State. Upon filing, the defective Enrolled Senate Bill 1045 will be replaced with the correct Enrolled Senate Bill 1045 and assigned the same public act number. The inaccurate enrolled bill was signed by you on March 29, 2000, and filed with the Secretary of State on March 30, 2000. The effective date of Public Act No. 54 of 2000 will remain April 1, 2000.

"This procedure ensures that the bill as passed by both houses of the Legislature is accurately filed and effective, while this document will provide notification to the public. We apologize for any inconvenience this may have caused you and the citizens of the state of Michigan. If you have any questions, please feel free to contact us.

"Sincerely,
"Carol Morey Viventi
"Secretary of the Senate
"Gary L. Randall
"Clerk of the House of Representatives
"cc: Candice S. Miller, Secretary of State"

Enacting section 1 of Act 325 of 2010 provides:

"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act takes effect April 1, 2010.

"(2) Section 3207 of the estates and protected individuals code, 1998 PA 386, MCL 700.3207, as amended by this amendatory act, takes effect on the date this amendatory act is enacted into law."

Popular name: Statutory Will

Popular name: EPIC

PART 6

RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

700.2601 Definitions.

Sec. 2601. As used in this part:

(a) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of 1 or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or another form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes, but is not limited to, an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he or she survived the testator.

(c) "Devise" includes, but is not limited to, an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes, but is not limited to, the following:

(i) A class member if the devise is in the form of a class gift.

(ii) The beneficiary of a trust, but not the trustee.

(iii) An individual or class member who was deceased at the time the testator executed his or her will or an individual or class member who was living at that time, but fails to survive the testator.

(iv) An appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, who is not the testator's or donor's child.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under section 2702.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2602 Scope; passage of property and after-acquired property.

Sec. 2602. (1) In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

(2) A will may provide for the passage of all property that the testator owns at death and all property acquired by the estate after the testator's death.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2603 Substitute gift.

Sec. 2603. (1) If a devisee fails to survive the testator and is a grandparent, a grandparent's descendant, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subdivision (d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. Those surviving descendants take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subdivision (d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or to a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased devisee. The property to which the devisee would have been entitled had all class members survived the testator passes to the surviving devisees and the deceased devisees' surviving descendants. Each surviving devisee takes the share to which he or she would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this subdivision, "deceased devisee" means a class member who fails to survive the testator and leaves 1 or more surviving descendants.

(c) For the purposes of section 2602(1), words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the appointee's descendants for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(2) If, under subsection (1), substitute gifts are created and not superseded with respect to more than 1 devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts take effect is resolved as follows:

(a) Except as provided in subdivision (b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) As used in this section:

(a) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(b) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(c) "Younger-generation devise" means a devise for which all of the following are true:

(i) Is to a descendant of a devisee of the primary devise.

(ii) Is an alternative devise with respect to the primary devise.

(iii) Is a devise for which a substitute gift is created.

(iv) Would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(d) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2604 Failure of testamentary provision.

Sec. 2604. (1) Except as provided in section 2603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) Except as provided in section 2603, if the residue is devised to 2 or more persons, the share of a

residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2605 Increase in securities; accessions.

Sec. 2605. (1) If a testator executes a will that devises securities and the testator then owns securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities are acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(a) Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options.

(b) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(c) Securities of the same organization acquired as a result of a plan of reinvestment.

(2) Distributions in cash before death with respect to a described security are not part of the devise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2606 Nonademption of specific devises; unpaid proceeds of sale, condemnation, or insurance; sale by conservator or agent.

Sec. 2606. (1) A specific devisee has a right to the specifically devised property in the testator's estate at death and all of the following:

(a) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property.

(b) Any amount of a condemnation award for the taking of the property unpaid at death.

(c) Any proceeds unpaid at death on fire or casualty insurance on, or other recovery for, injury to the property.

(d) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(e) Real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property.

(f) Unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subdivisions (a) to (e).

(2) If an agent acting within the authority of a durable power of attorney for an incapacitated principal or a conservator sells or mortgages specifically devised property, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to an agent acting within the authority of a durable power of attorney for an incapacitated principal or to a conservator, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of a specific devisee under subsection (2) is reduced by a right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's disability ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal, an incapacitated principal is a principal who is an incapacitated individual, an adjudication of the individual's incapacity before death is not necessary, and the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2607 Nonexoneration.

Sec. 2607. A specific devise and a transfer under an exercise of a power of appointment that is equivalent to a specific devise, including the exercise of a right to withdraw specific property, passes subject to any

mortgage or other security interest existing on the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2608 Ademption by satisfaction.

Sec. 2608. (1) Property a testator gave in his or her lifetime to a person is treated as a satisfaction of a devise in whole or in part only if any of the following are true:

(a) The will provides for a deduction of the gift.

(b) The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(c) The devisee acknowledges in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2603 and 2604, unless the testator's contemporaneous writing provides otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 7

RULES OF CONSTRUCTION APPLICABLE TO DONATIVE DISPOSITIONS IN WILLS AND OTHER GOVERNING INSTRUMENTS

700.2701 Scope.

Sec. 2701. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument unless the application of a particular section is limited by its terms to a specific type of provision or governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2702 Requirement of survival by 120 hours.

Sec. 2702. (1) For the purposes of this act, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) Except as provided in subsection (4), if it is not established by clear and convincing evidence that 1 of 2 co-owners with right of survivorship survived the other co-owner by 120 hours, 1/2 of the co-owned property passes as if 1 had survived by 120 hours and 1/2 as if the other had survived by 120 hours. If there are more than 2 co-owners and it is not established by clear and convincing evidence that at least 1 of them survived the others by 120 hours, the property passes in the proportion that 1 bears to the whole number of co-owners. For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles 1 or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required under any of the following circumstances:

(a) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case. Language dealing explicitly with simultaneous deaths includes language in a governing instrument that creates a presumption that applies if the evidence is not sufficient to determine the order of deaths.

(b) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. Survival of the event or the specified period, however, must be

established by clear and convincing evidence.

(c) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 2(1)(a), (2)(a), or (3)(a) of the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.72, or to become invalid under section 2(1)(b), (2)(b), or (3)(b) of the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.72.

(d) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. Survival, however, must be established by clear and convincing evidence.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2703 Protection of payors and other third parties.

Sec. 2703. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument who, under section 2702, is not entitled to the payment or item of property, or for having taken another action in reliance on the beneficiary's apparent entitlement under the terms of the governing instrument. A payor or other third party is liable for a payment made or other action taken 3 or more business days after the payor or other third party actually receives written notice of a claimed lack of entitlement under section 2702. A payor or other third party is not obligated to inquire as to whether the 120-hour survival provision of section 2702 applies to any individual or to seek evidence regarding whether that provision applies to any individual. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of a claimed lack of entitlement under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that the beneficiary designated in the governing instrument did not survive the decedent by 120 hours. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of a claimed lack of entitlement under section 2702, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if proceedings have not been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from all claims for the value of amounts paid to the county treasurer.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2702, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2704 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2704. (1) Section 2702 does not obligate a person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit and does not make such a person liable for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or another benefit to which the person is not entitled under section 2702 is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment, or the value of the item of property or benefit, to the person who is entitled to it under section 2702.

(2) If section 2702 or any part of that section is preempted by federal law with respect to a payment, an item of property, or another benefit covered by section 2702, a person who, not for value, receives the

payment, item of property, or another benefit to which the person is not entitled under section 2702 is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment, or the value of the item of property or benefit, to the person who would have been entitled to it if section 2702 or part of that section were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2705 Choice of law as to meaning and effect of governing instrument.

Sec. 2705. The meaning and legal effect of a governing instrument other than a trust are determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in part 2 of this article, the provisions relating to exempt property and allowances described in part 4 of this article, or another public policy of this state otherwise applicable to the disposition.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2706 Power of appointment; meaning of specific reference requirement.

Sec. 2706. If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2707 Class gifts construed to accord with intestate succession.

Sec. 2707. (1) An adopted individual or an individual born out of wedlock, and his or her respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as “uncles”, “aunts”, “nieces”, or “nephews”, are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as “brothers”, “sisters”, “nieces”, or “nephews”, are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not a natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that natural parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not an adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2708 Definitions regarding beneficiary designation.

Sec. 2708. As used in this section and sections 2709 to 2712:

(a) “Alternative beneficiary designation” means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of 1 or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or another form.

(b) “Beneficiary” means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent. Beneficiary includes a class member if the beneficiary designation is in the form of a class gift; an individual or class member who was deceased at the time the beneficiary designation was executed; and an individual or class member who was then living but who failed to survive the decedent. Beneficiary excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) “Beneficiary designation” includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent, but who would have taken under a beneficiary designation in the form of a class gift had he or she survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who did not predecease the decedent and is not considered to have predeceased the decedent under section 2702.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2709 Substitute gift.

Sec. 2709. If a beneficiary fails to survive the decedent and is a grandparent, a grandparent's descendant, or the decedent's stepchild, the following apply:

(a) Except as provided in subdivision (d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subdivision (d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of each deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this subdivision, "deceased beneficiary" means a class member who failed to survive the decedent and left 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2710 Multiple substitute gifts.

Sec. 2710. (1) If, under section 2709, substitute gifts are created and not superseded with respect to more than 1 beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subdivision (b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(2) As used in this section:

(a) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(b) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(c) "Younger-generation beneficiary designation" means a beneficiary designation for which all of the following are true:

(i) Is to a descendant of a beneficiary of the primary beneficiary designation.

(ii) Is an alternative beneficiary designation with respect to the primary beneficiary designation.

(iii) Is a beneficiary designation for which a substitute gift is created.

(iv) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(d) "Younger-generation substitute gift" means the substitute gift created with respect to the

younger-generation beneficiary designation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2711 Protection of payors.

Sec. 2711. (1) Except as otherwise provided in this section, a payor or other third party is not liable for making a payment under the terms of a beneficiary designation. Payment made before the actual receipt of a written notice of a claim to a substitute gift discharges the payor or other third party, but not the recipient, from a claim for the amount paid. A payor or other third party is liable for a payment made 3 or more business days after the payor or other third party actually receives written notice of the claim. A payor or other third party is not obligated to inquire as to whether a substitute gift exists under sections 2709 and 2710 or to seek evidence regarding such a gift. A recipient who incorrectly receives a payment is liable for the payment received, whether or not written notice of the claim is given.

(2) A written notice of a substitute claim must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that a claim to a substitute gift is being made under sections 2709 and 2710. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of a written notice of the claim, a payor or other third party may pay any amount the payor or other third party owes to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from all claims for the amount paid.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under sections 2709 and 2710, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2712 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2712. (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is not obligated to return the payment, item of property, or benefit and is not liable for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or another benefit to which the person is not entitled under sections 2709 and 2710 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under sections 2709 and 2710.

(2) If this section and sections 2709 and 2710 are, or any part of these sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a person who, not for value, receives the payment, item of property, or another benefit to which the person is entitled under those sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it if these sections or a part of these sections were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2713 Definitions for survivorship with respect to future interests under terms of trust.

Sec. 2713. As used in this section and sections 2714 to 2716:

(a) "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of 1 or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent,

condition-subsequent, or another form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that a lapsed or failed devise is to pass under the residuary clause.

(b) “Beneficiary” means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) “Class member” includes, but is not limited to, an individual who failed to survive the distribution date but who would have taken under a future interest in the form of a class gift had he or she survived the distribution date.

(d) “Distribution date” means, with respect to a future interest, the time when the future interest takes effect in possession or enjoyment. The distribution date does not need to occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(e) “Future interest” includes, but is not limited to, an alternative future interest and a future interest in the form of a class gift.

(f) “Future interest under the terms of a trust” means a future interest that is created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(g) “Surviving beneficiary” or “surviving descendant” means a beneficiary or a descendant who does not predecease the distribution date and who is not considered to have predeceased the distribution date under section 2702.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2714 Survivorship required for gift under trust; substitute gift; applicability of subsection (1).

Sec. 2714. (1) Subject to subsection (2), a future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in subdivision (d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subdivision (d), if the future interest is in the form of a class gift, other than a future interest to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family” or a class described by language of similar import, a substitute gift is created in the surviving descendants of a deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. As used in this subdivision, “deceased beneficiary” means a class member who fails to survive the distribution date and leaves 1 or more surviving descendants.

(c) For the purposes of section 2701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or another form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision (a) or (b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(2) Subsection (1) does not apply to a future interest if the beneficiary of the interest died or irrevocably transferred the interest before April 1, 2000.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.2715 Multiple substitute gifts.

Sec. 2715. (1) If, under section 2714, substitute gifts are created and not superseded with respect to more

than 1 future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subdivision (b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(2) As used in this section:

(a) “Primary future interest” means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(b) “Primary substitute gift” means the substitute gift created with respect to the primary future interest.

(c) “Younger-generation future interest” means a future interest for which all of the following are true:

(i) Is to a descendant of a beneficiary of the primary future interest.

(ii) Is an alternative future interest with respect to the primary future interest.

(iii) Is a future interest for which a substitute gift is created.

(iv) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(d) “Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation future interest.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2716 No substitute taker; lapse.

Sec. 2716. (1) Except as provided in subsection (2), if, after the application of sections 2714 and 2715, there is no surviving taker, the property passes in the following order:

(a) If the trust is created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) If a taker is not produced by the application of subdivision (a), the property passes to the transferor's heirs under section 2720.

(2) If, after the application of sections 2714 and 2715, there is no surviving taker and if the future interest was created by the exercise of a power of appointment, the following apply:

(a) The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust.

(b) If a taker is not produced by the application of subdivision (a), the property passes as provided in subsection (1). For purposes of subsection (1), “transferor” means the donor if the power was a nongeneral power and means the donee if the power was a general power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2717 Class gifts to “descendants,” “issue,” or “heirs of the body”; form of distribution if none specified.

Sec. 2717. If a class gift in favor of “descendants”, “issue”, or “heirs of the body” does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in the shares each class member would receive under the applicable law of intestate succession if the designated ancestor had died intestate at the time of distribution owning the subject matter of the class gift.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2718 Representation; per capita at each generation; per stirpes.

Sec. 2718. (1) If an applicable statute or a governing instrument calls for the property to be distributed “by representation” or “per capita at each generation”, the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor that contains 1 or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date. This rule of construction applies to documents originally created on and after April 1, 2000, and to all instruments amended on and after April 1, 2000, that use the phrase “by

representation” or “per capita at each generation”. If an amendment uses either phrase, the rule of this section applies to the entire instrument.

(2) If a governing instrument calls for property to be distributed “per stirpes”, the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants. Each surviving child, if any, is allocated 1 share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) For the purposes of subsections (1) and (2), a deceased individual who left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

(4) As used in this section:

(a) “Deceased child” or “deceased descendant” means a child or descendant who either predeceases the distribution date or is considered to predecease the distribution date under section 2702.

(b) “Distribution date” means, with respect to an interest, the time when the interest is to take effect in possession or enjoyment. The distribution date does not need to occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(c) “Surviving ancestor”, “surviving child”, or “surviving descendant” means an ancestor, a child, or a descendant who does not predecease the distribution date and is not considered to have predeceased the distribution date under section 2702.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2719 Worthier-title doctrine abolished.

Sec. 2719. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor’s “heirs”, “heirs at law”, “next of kin”, “distributees”, “relatives”, or “family”, or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2720 Interests in “heirs”.

Sec. 2720. If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual’s “heirs”, “heirs at law”, “next of kin”, “relatives”, or “family” or language of similar import, the property passes to those persons, including the state, in the shares that would succeed to the designated individual’s intestate estate under the intestate succession law of the designated individual’s domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual’s surviving spouse is living, but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2721 Construction as to age of majority.

Sec. 2721. A provision contained in a governing instrument that makes reference to a “minor”, “age of majority”, or a similar phrase differentiating between an individual’s majority and minority status shall be construed to refer to the legal age of majority in effect at the time the governing instrument was executed.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2722 Honorary trusts; trusts for pets.

Sec. 2722. (1) Except as provided by another statute and subject to subsection (3), if a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee, and if there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this subsection and subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is

admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the terms of the trust, no portion of the principal or income may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) As directed in the terms of the trust.

(ii) To the settlor, if then living.

(iii) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will.

(iv) If no taker is produced by the application of subparagraph (i), (ii), or (iii), to the transferor's heirs under section 2720.

(c) For the purposes of sections 2714 to 2716, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the terms of the trust or, if none, by an individual appointed by a court upon petition to it by an individual. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or remove a person appointed.

(e) Except as ordered by the court or required by the terms of the trust, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) The court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subdivision (b).

(g) If a trustee is not designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the terms of the trust or if no designated successor trustee agrees to serve or is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

(h) The trust is not subject to the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2723 Will, trust, or beneficiary designation of decedent who dies after December 31, 2009 and before January 1, 2011; presumption; retroactive effective date; "2010 federal tax relief act" defined.

Sec. 2723. (1) Except as provided in subsection (3), for purposes of interpreting a will, trust, or beneficiary designation of or by a decedent who dies after December 31, 2009 and before January 1, 2011, a will, trust, or beneficiary designation is presumed to refer to the federal estate tax and federal generation-skipping transfer tax laws as they apply to estates of decedents who die on January 1, 2010, in accordance with section 302(c) of the 2010 federal tax relief act without regard to the election permitted by section 301(c) of that act, if either of the following applies to the will, trust, or beneficiary designation:

(a) The will, trust, or beneficiary designation contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, taxable estate, gross estate, estate tax value, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the internal revenue code of 1986, 26 USC 1 to 9834, relating to the federal estate tax or generation-skipping transfer tax.

(b) The will, trust, or beneficiary designation measures a share of an estate, trust, or contractual benefit subject to a beneficiary designation based on the amount that can pass free of federal estate tax or the amount that can pass free of federal generation-skipping transfer tax or based on a similar provision of federal estate tax or federal generation-skipping transfer tax law.

(2) A presumption that arises under subsection (1) is a rebuttable presumption that the decedent intended that the formula be construed as provided in subsection (1). A fiduciary of an estate, trust, or contractual benefit subject to a beneficiary designation under which the presumption is applicable shall give notice to

each beneficiary whose interest is affected by the presumption. A presumption that arises under subsection (1) does not preclude a fiduciary from making any available election, including an election under section 301(c) of the 2010 federal tax relief act. A fiduciary who has made an election under section 301(c) of the 2010 federal tax relief act may commence a proceeding to determine whether the decedent would not have intended the formula to be construed as provided in subsection (1). All interested persons affected by a presumption that arises under subsection (1) may enter into a nonjudicial settlement under section 7111 that the decedent intended the formula to be construed in a different manner from the presumption under subsection (1). A beneficiary whose interest is affected by the presumption or a fiduciary of the will, trust, or contractual benefit subject to a beneficiary designation may commence a proceeding to determine whether the decedent intended that the formula be construed as provided under subsection (1). Solely for the purpose of determining the intent of the decedent regarding the formula under this section, the court may consider the surrounding circumstances and the rules of construction. A person who commences a proceeding under this section has the burdens of proof and persuasion in establishing the decedent's intent that the formula should not be construed as provided in subsection (1). A proceeding under this subsection shall be commenced or a nonjudicial settlement under this subsection shall be executed within whichever of the following is earlier:

(a) Two years after the decedent's death.

(b) Six months after the fiduciary sent the beneficiary a notice of the presumption under this subsection or the due date for filing the federal estate tax return of the decedent, if later.

(3) A presumption under subsection (1) does not apply with respect to a will, trust, or beneficiary designation that is executed or amended after December 31, 2010, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date when no federal estate or generation-skipping transfer tax would apply.

(4) This section is a remedial response to changes in the federal estate tax and generation-skipping transfer tax and takes effect retroactively on January 1, 2010.

(5) As used in this section, "2010 federal tax relief act" means the tax relief, unemployment insurance reauthorization, and job creation act of 2010, Public Law 111-312.

History: Add. 2010, Act 224, Eff. Jan. 1, 2010;—Am. 2012, Act 303, Imd. Eff. Sept. 25, 2012.

Popular name: EPIC

PART 8

GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

700.2801 Effect of divorce, annulment, decree of separation, bigamy, and absence.

Sec. 2801. (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of parts 1 to 4 of this article and of section 3203, a surviving spouse does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual.

(c) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

(d) An individual who, at the time of the decedent's death, is living in a bigamous relationship with another individual.

(e) An individual who did any of the following for 1 year or more before the death of the deceased person:

(i) Was willfully absent from the decedent spouse.

(ii) Deserted the decedent spouse.

(iii) Willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

(3) For purposes of section 3206, a surviving spouse does not include either of the following:

(a) An individual described in subsection (2).

(b) An individual who is a party to a divorce or annulment proceeding with the decedent at the time of the decedent's death.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2016, Act 57, Eff. June 27, 2016.

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Popular name: EPIC

700.2802 Definitions relating to effect of certain criminal acts.

Sec. 2802. As used in this section and sections 2803 and 2804:

(a) "Abuse, neglect, or exploitation" means an act, the commission of which is a felony, under any of the following:

(i) An act that constitutes child abuse under section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(ii) A criminal act that is an offense under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(iii) A violation of section 174a of the Michigan penal code, 1931 PA 328, MCL 750.174a.

(iv) A criminal act that is an offense involving domestic violence as that term is defined in section 27b of chapter VIII of the code of criminal procedure, 1927 PA 175, MCL 768.27b.

(v) A criminal act that constitutes abuse, neglect, or exploitation as those terms are defined in section 11 of the social welfare act, 1939 PA 280, MCL 400.11.

(b) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(c) "Felon" means the individual who was convicted of committing the abuse, neglect, or exploitation.

(d) "Governing instrument" means a governing instrument executed by the decedent.

(e) "Revocable" means, with respect to a disposition, appointment, provision, or nomination, one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer or felon, whether or not the decedent was then empowered to designate himself or herself in place of his or her killer or felon and whether or not the decedent then had the capacity to exercise the power.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.2803 Forfeiture, revocation, or severance.

Sec. 2803. (1) An individual who feloniously and intentionally kills or who is convicted of committing abuse, neglect, or exploitation with respect to the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, a family allowance, and exempt property. If the decedent died intestate, the decedent's intestate estate passes as if the killer or felon disclaimed his or her intestate share.

(2) The felonious and intentional killing or the conviction of the felon for the abuse, neglect, or exploitation of the decedent does all of the following:

(a) Revokes all of the following that are revocable:

(i) Disposition or appointment of property made by the decedent to the killer or felon in a governing instrument.

(ii) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer or felon.

(iii) Nomination of the killer or felon in a governing instrument, nominating or appointing the killer or felon to serve in a fiduciary or representative capacity, including a personal representative, executor, funeral representative, trustee, or agent.

(b) Severs the interests of the decedent and killer or felon in property held by them at the time of the killing, abuse, neglect, or exploitation as joint tenants with the right of survivorship, transforming the interests of the decedent and killer or felon into tenancies in common.

(c) Bars the killer or felon from exercising a power under section 3206(1).

(3) A severance under subsection (2)(b) does not affect a third party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer or felon unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied on, in the ordinary course of transactions involving that type of property, as evidence of ownership.

(4) A provision of a governing instrument is given effect as if the killer or felon disclaimed all provisions revoked by this section or, for a revoked nomination in a fiduciary or representative capacity, as if the killer or felon predeceased the decedent.

(5) A killer's or felon's wrongful acquisition of property or interest not covered by this section must be treated in accordance with the principle that a killer or felon cannot profit from his or her wrong.

(6) After all right to appeal has been exhausted, a judgment of conviction establishing criminal

accountability for the felonious and intentional killing or the abuse, neglect, or exploitation of the decedent conclusively establishes the convicted individual as the decedent's killer or as a felon, as applicable, for purposes of this section. With respect to a claim of felonious and intentional killing, in the absence of a conviction, the court, on the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes the individual as the decedent's killer for purposes of this section.

(7) This section does not apply if the forfeiture, revocation, or severance would occur because of abuse, neglect, or exploitation and the decedent executed a governing instrument after the date of the conviction expressing a specific intent to allow the felon to inherit or otherwise receive the estate or property of the decedent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012;—Am. 2016, Act 57, Eff. June 27, 2016.

Popular name: EPIC

700.2804 Protection of payors and other third parties.

Sec. 2804. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing or by abuse, neglect, or exploitation, or for having taken another action in reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death. A payor or other third party is liable for a payment made or other action taken 10 or more business days after the payor or other third party actually receives written notice of a claimed forfeiture or revocation under section 2803. A payor or other third party is not obligated to determine whether the decedent was the victim of felonious killing or abuse, neglect, or exploitation or to seek evidence relating to such a killing or abuse, neglect, or exploitation even if the circumstances of the decedent's death are suspicious as to the beneficiary's participation in such a killing or if there is evidence that would raise suspicions that the decedent was the victim of abuse, neglect, or exploitation by the beneficiary. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of a claimed forfeiture or revocation under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include all of the following information:

(a) The decedent's name, age, and date of birth, and 1 of the following:

(i) The last 4 digits of the decedent's social security number.

(ii) The decedent's last known address.

(b) The name of the person asserting an interest.

(c) The nature of the payment, item of property, or other benefit.

(d) A statement that a claim of forfeiture or revocation is being made under section 2803.

(e) If the claim is based on a conviction for abuse, neglect, or exploitation, a copy of the judgment of conviction.

(4) Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(5) Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from a claim for the value of an amount paid to the county treasurer.

(6) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2803, shall disburse the money in accordance with the determination.

(7) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.2805 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2805. (1) Section 2803 does not obligate a person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit, and such a person is not liable under section 2803 for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, an item of property, or another benefit to which the person is not entitled under section 2803 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under section 2803.

(2) If this section and sections 2803 and 2804 are, or a part of those sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a person who, not for value, receives the payment, item of property, or another benefit to which the person is not entitled under these sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of the property or benefit, to the person who would have been entitled to it if these sections or a part of these sections were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2806 Definitions relating to revocation of probate and nonprobate transfers by divorce; revocation by other changes of circumstances.

Sec. 2806. As used in this section and sections 2807 to 2809:

(a) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section and sections 2807 to 2809.

(c) "Divorced individual" includes, but is not limited to, an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by a divorced individual before the divorce from, or annulment of his or her marriage to, his or her former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable" means, with respect to a disposition, appointment, provision, or nomination, one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2807 Revocation upon divorce; revocation by other changes of circumstances.

Sec. 2807. (1) Except as provided by the express terms of a governing instrument, court order, or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage does all of the following:

(a) Revokes all of the following that are revocable:

(i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse.

(ii) A provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse.

(iii) A nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in a fiduciary or representative capacity, including, but not limited to, a personal representative, executor, funeral representative, trustee, conservator, agent, or guardian.

(b) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

(c) Bars the former spouse from exercising a power under section 3206(1).

(2) A severance under subsection (1)(b) does not affect a third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied on, in the ordinary course of transactions involving that type of property, as evidence of ownership.

(3) Each provision of a governing instrument is given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, for a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(4) Each provision revoked solely by this section is revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(5) No change of circumstances other than as described in this section and in sections 2803 to 2805, 2808, and 2809 causes a revocation.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2016, Act 57, Eff. June 27, 2016.

Popular name: EPIC

700.2808 Protection of payors and other third parties.

Sec. 2808. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken another action in reliance on the validity of the governing instrument. A payor or other third party is liable for a payment made or other action taken 3 or more business days after the payor or other third party actually receives written notice of a claimed revocation or severance under section 2807. A payor or other third party is not obligated to inquire as to the continued marital relationship between the decedent and a beneficiary described in this subsection or to seek evidence about such a relationship. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of the divorce, annulment, or remarriage under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that a divorce, annulment, or remarriage of the decedent and the designated individual occurred. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from a claim for the value of an amount paid to the county treasurer.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2807, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2809 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2809. (1) Section 2807 does not obligate an individual who purchases property from a former spouse, a relative of a former spouse, or another person for value and without notice, or who receives from a former

spouse, a relative of a former spouse, or another person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit, and such a person is not liable under section 2807 for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or another benefit to which that person is not entitled under section 2807 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under section 2807.

(2) If this section and sections 2807 and 2808 are, or a part of 1 of those sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a former spouse, relative of the former spouse, or another person who, not for value, receives a payment, an item of property, or another benefit to which that person is not entitled under these sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it if these sections or a part of 1 of these sections were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 9 DISCLAIMERS

700.2901 Short title of part; definitions.

Sec. 2901. (1) This part shall be known and may be cited as the "disclaimer of property interests law".

(2) As used in this part:

(a) "Agent" means an agent or attorney in fact acting under a written power of attorney and within the scope of his, her, or its authority.

(b) "Disclaimable interest" includes, but is not limited to, property, the right to receive or control property, and a power of appointment. Disclaimable interest does not include an interest retained by or conferred upon the disclaimant by the disclaimant at the creation of the interest. For purposes of this definition, the survivorship interest in joint property is not considered to be an interest retained or conferred upon the disclaimant even if the disclaimant created the joint property.

(c) "Effective date of a governing instrument other than a will or trust created by will" means the date on which a property right vests or a contract right arises, even though either right is subject to divestment.

(d) "Fiduciary" includes, but is not limited to, an agent, a conservator, a guardian if no conservator has been appointed, a guardian ad litem, a personal representative, a trustee, a probate court acting through a protective order under this act, and a temporary, successor, or foreign fiduciary.

(e) "Fiduciary power" means a management power relating to the administration or management of assets similar to those powers granted to a personal representative in section 3715 and a trustee in sections 7816 and 7817, and granted by law to a fiduciary or conferred upon a fiduciary in a governing instrument.

(f) "Governing instrument" means a deed, assignment, bill of sale, will, trust, beneficiary designation, contract, instrument creating or exercising a power of appointment or a power of attorney, or another instrument under which property devolves, a property right is created, or a contract right is created. Governing instrument includes the provable terms of an oral contract or arrangement under which property devolves or a property right is created.

(g) "Joint property" means property that is owned by 2 or more persons with rights of survivorship, and includes a tenancy by the entireties in real property, a tenancy in personal property as provided in section 1 of 1927 PA 212, MCL 557.151, a joint tenancy, a joint tenancy with rights of survivorship, and a joint life estate with contingent remainder in fee. For purposes of this part, joint property is considered to consist of a present interest and a future interest. The future interest is the right of survivorship.

(h) "Person" includes an entity and an individual, but does not include a fiduciary, an estate, or a trust.

(i) "Property" means anything that may be the subject of ownership. Property includes both real and personal property and an interest in property, including a present interest; a future interest; a legal interest; an equitable interest; an interest acquired by testate succession, by intestate or other statutory succession, by succession to a disclaimed interest, or by lapse or release of a power of appointment; or an interest that may be otherwise acquired under a governing instrument.

(j) "Trust" means a fiduciary relationship with respect to property that subjects the person who holds title to the property to equitable duties to deal with the property for the benefit of another person, which fiduciary relationship arises as a result of a manifestation of an intention to create it. Trust includes an express trust, private or charitable, with additions to the trust, whether created by will or other than by will, and includes a

trust created by statute, judgment, or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2902 Right to disclaim; partial disclaimers; limitation on right to disclaim.

Sec. 2902. (1) A person, or a fiduciary representing a person to whom a disclaimable interest devolves, may disclaim a disclaimable interest in whole or in part. A trustee, with respect to the trust as a whole or with respect to a separate trust that is or will be established under the governing instrument, may disclaim a disclaimable interest, in whole or in part, but only to the extent that the governing instrument expressly gives the trustee the right to disclaim.

(2) A disclaimer may be of a specific asset, an interest in a specific asset, a pecuniary amount, a fractional or percentage share, or a limited interest or estate. A provision in a power of attorney granting the agent the authority to do whatever the principal could do, or words of similar effect, includes the authority to disclaim, unless the authority to disclaim is specifically excluded or limited. Unless the governing instrument is a trust instrument that does not authorize the trustee to disclaim or a power of attorney that denies the agent the authority to disclaim, the right to disclaim exists notwithstanding the existence of either of the following:

(a) A spendthrift provision or similar restriction that limits the interest of the disclaimant.

(b) A restriction or limitation on the right to disclaim contained in the governing instrument.

(3) A fiduciary may disclaim a fiduciary power. The right to disclaim a fiduciary power exists notwithstanding a restriction or limitation on the right to disclaim contained in the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.2903 Contents; signature.

Sec. 2903. (1) A disclaimer is not valid unless it complies with all of the following:

(a) Is in writing.

(b) Declares the disclaimer.

(c) Describes the disclaimed interest.

(d) Is signed by the disclaimant.

(e) Is delivered as provided in sections 2904, 2905, and 2906.

(2) If a disclaimable interest is disclaimed by a fiduciary on behalf of the person to whom the disclaimable interest devolves, the disclaimer must be signed by all incumbent fiduciaries. Unless the governing instrument requires otherwise, a disclaimer of a disclaimable interest by a trustee may be signed by less than all incumbent trustees. A disclaimer of a fiduciary power by a fiduciary may be signed by less than all incumbent fiduciaries.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2904 Delivery; timing; appropriate persons.

Sec. 2904. (1) Except as provided in section 2905, if a disclaimed interest arises under a will or trust created by will, or by the laws of intestacy, the disclaimer must be delivered after the death of the owner of the property and before any event described in section 2910. If a disclaimed interest arises under a will or by the laws of intestacy, the disclaimer must be delivered to the personal representative of the deceased owner's estate. If a disclaimed interest arises under a trust created by will, the disclaimer must be delivered to the trustee of the trust created by will or, if a trustee has not been appointed, to the personal representative of the deceased owner's estate.

(2) Except as provided in section 2905, if a disclaimed interest arises under a governing instrument other than a will or trust created by will, the disclaimer must be delivered after the effective date of the governing instrument and before any event described in section 2910. A disclaimer under this subsection must be delivered in 1 of the following manners:

(a) If the disclaimer is made by a beneficiary of a trust, the disclaimer must be delivered to the trustee.

(b) If the disclaimer is made by a donee with respect to a gift from a living donor, the disclaimer must be delivered to the donor of the gift.

(c) If the disclaimer is made by a beneficiary under a beneficiary designation, the disclaimer must be delivered to the payor.

(d) If the disclaimer is made by a trustee with respect to a separate trust that is or will be established under the governing instrument, the disclaimer must be delivered to another incumbent trustee of that trust who has

not disclaimed or to all the beneficiaries of that trust who are then living and whose whereabouts are known or reasonably ascertainable.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2905 Delivery; disclaimer under power of appointment; disclaimer of joint property or fiduciary power.

Sec. 2905. (1) A disclaimed interest that is subject to, or arises under, an exercise, release, or lapse of a power of appointment, must comply with the following:

(a) A disclaimer by an appointee must be delivered to the donee, to the personal representative of the donee's estate, or to the fiduciary under the instrument that created the power of appointment. The disclaimer by the appointee must be delivered after the exercise of the power of appointment by the donee and before any event described in section 2910.

(b) A disclaimer by a taker in default must be delivered to the donee, to the fiduciary under the instrument that created the power of appointment, or to 1 of the persons entitled to the property in the event of a disclaimer. The disclaimer by a taker in default may be delivered before or after the lapse or release of the power of appointment, and must be delivered before any event described in section 2910.

(2) If the disclaimed interest arises out of joint property, the disclaimer must be delivered after creation of the joint ownership and before any event described in section 2910, to the person who created the joint property, to a remaining owner who has not disclaimed, or to the person or fiduciary entitled to the disclaimed interest in the event of a disclaimer. The barring of the right to disclaim a present interest under section 2910 does not bar the right to disclaim the future interest.

(3) A fiduciary power may be disclaimed at any time, before or after exercise of the power. The disclaimer must be delivered to the person who established the instrument that gave rise to the power or to 1 of the following:

(a) If the fiduciary is a personal representative, to all the devisees under the will who are then living and whose whereabouts are known or reasonably ascertainable.

(b) If the fiduciary is a trustee, to another incumbent trustee who has not disclaimed the power or to all the beneficiaries of the trust who are then living and whose whereabouts are known or reasonably ascertainable.

(c) If the fiduciary is a guardian or conservator, to the interested persons.

(d) If the fiduciary is an agent, to the principal or, if the principal is legally incapacitated, to the principal's presumptive heirs at law.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2906 Manner of delivery; filing with court.

Sec. 2906. (1) A disclaimer must be delivered in 1 of the following manners:

(a) By personally handing it to the person to whom it is to be delivered or to a fiduciary representing that person.

(b) By enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to whom it is to be delivered or to a fiduciary representing that person, and depositing the envelope and its contents in the United States mail.

(c) By another means that is reasonably likely to accomplish delivery to the person who is to receive the disclaimer or to a fiduciary representing that person.

(2) If delivery is to be made to a fiduciary, the following apply:

(a) If a fiduciary is not currently serving, the delivery of the disclaimer is made by filing the disclaimer with the probate court that has jurisdiction to entertain proceedings to appoint or qualify the fiduciary.

(b) If the fiduciary cannot be located, the delivery of the disclaimer is made by filing the disclaimer with the probate court that has jurisdiction over the fiduciary.

(3) A copy of a disclaimer may be filed in a probate court where proceedings are pending concerning the disclaimed interest or in a probate court that would have jurisdiction if proceedings were commenced. If the disclaimed interest pertains to real property, a copy of the disclaimer may be recorded in the office of the register of deeds of the county in which the property is located.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2907 Disposition of disclaimed interest; effect on future interest.

Sec. 2907. (1) Except as otherwise provided in this section and section 2908, if a disclaimed interest arises

under a will or a trust created by will, or by the laws of intestacy, and the decedent has not provided for another disposition of that interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent. However, if by law, or under the will or trust created by will, the descendants of the disclaimant would take the disclaimant's share by representation if the disclaimant predeceased the decedent, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent.

(2) A future interest that takes effect in possession or enjoyment upon the termination of the disclaimed interest takes effect as if the disclaimant had predeceased the decedent. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

(3) Except as otherwise provided in this section and section 2908, if the disclaimed interest arises under a governing instrument other than a will or trust created by will, and the governing instrument does not provide for another disposition of that interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. However, if by law or under the governing instrument the descendants of the disclaimant would take the disclaimant's share by representation if the disclaimant predeceased the effective date of the instrument, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument.

(4) A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the time when the interest was entitled to take effect in possession or enjoyment. A future interest that is held by the disclaimant and that takes effect at a time certain is not accelerated and takes effect at the time certain.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.2908 Disposition of disclaimed joint interest, trust interest, and fiduciary power.

Sec. 2908. (1) If a disclaimed interest arises out of joint property created by a governing instrument, testamentary or nontestamentary, the following apply:

(a) If the disclaimant is the only living owner, the disclaimed interest devolves to the estate of the last to die of the other joint owners.

(b) If the disclaimant is not the only living owner, the disclaimed interest devolves to the other living joint owners equally or, if there is only 1 living owner, all to the other living owner.

(2) If the donee of a power of appointment or other power not held in a fiduciary capacity disclaims the power, all of the following apply:

(a) If the donee has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes effective.

(b) If the donee has exercised the power, the disclaimer takes effect immediately after the last exercise of the power.

(c) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

(3) If all incumbent trustees disclaim a disclaimable interest, and the governing instrument does not provide for another disposition of the disclaimed interest if it is disclaimed or for another disposition of disclaimed or failed interests in general, then the disclaimed interest devolves as if the trust with respect to which the disclaimer was made never existed. If less than all incumbent trustees disclaim a disclaimable interest and the governing instrument does not provide for another disposition of the disclaimed interest under those circumstances, then the trustee who disclaims is treated as never having had any interest in or power over the disclaimed interest.

(4) If a fiduciary disclaims a fiduciary power, the fiduciary power ceases to exist as of the effective date of the disclaimer. A disclaimer of a fiduciary power by 1 of multiple incumbent fiduciaries is binding only on the fiduciary who disclaims and is not binding on the other incumbent fiduciaries or on successor fiduciaries. A disclaimer of a fiduciary power by all incumbent fiduciaries is binding on all successor fiduciaries, unless the disclaimer states otherwise.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.2909 Persons bound; effect of disclaimer.

Sec. 2909. (1) A disclaimer, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving the right to disclaim, and all persons claiming through or under him or her.

(2) A disclaimer acts as a nonacceptance of the disclaimed interest, rather than as a transfer of the

disclaimed interest. The disclaimant is treated as never having received the disclaimed interest.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2910 Barring right to disclaim.

Sec. 2910. (1) The right to disclaim property is barred by any of the following events that occur after the event giving rise to the right to disclaim and before the disclaimer is perfected:

(a) An assignment, conveyance, encumbrance, pledge, or transfer of the property, or a contract for such a transaction.

(b) A written waiver of the right to disclaim.

(c) An acceptance of the disclaimable interest or a benefit under the disclaimable interest after actual knowledge that a property right has been conferred.

(d) A sale of the property under judicial sale.

(e) The expiration of the permitted applicable perpetuities period.

(2) The right to disclaim is barred to the extent provided by other applicable law. A partial bar does not preclude the disclaimant from disclaiming all or any part of the balance of the property if the disclaimant has received a portion of the property and there still remains an interest that the disclaimant is yet to receive. An act that bars the right to disclaim a present interest in joint property does not bar the right to disclaim a future interest in joint property.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 314, Eff. Sept. 1, 2004.

Popular name: EPIC

700.2911 Abolition of common law right.

Sec. 2911. The common law right of disclaimer or renunciation is abolished. This part does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under another statute.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2912 Effect on existing property interests.

Sec. 2912. An interest in property that exists on the effective date of this act as to which, if a present interest, the time for delivering a disclaimer under this part has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed after the effective date of this act and before any event described in section 2910.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 10 INTERNATIONAL WILLS

700.2951 Definitions.

Sec. 2951. As used in this part:

(a) “International will” means a will executed in conformity with this part.

(b) “Authorized individual” means an individual who by section 2959 or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by foreign service regulations, is empowered to supervise the execution of international wills.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2952 Validity.

Sec. 2952. (1) If a will is made in the form of an international will that complies with the requirements of this part, the will is valid in regard to its form irrespective of the particular place where the will is made, of the location of assets, or of the testator's nationality, domicile, or residence.

(2) A will's invalidity as an international will does not affect its formal validity as a will of another kind.

(3) This part does not apply to the form of a testamentary disposition made by 2 or more individuals in 1 instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2953 Form and procedure; requirements.

Sec. 2953. To comply with this part as a valid international will, a will shall meet all of the following requirements regarding form and procedure:

(a) The will shall be made in writing, but does not need to be written by the testator personally. The will may be written in any language and may be written by hand or by any other means.

(b) The testator shall declare in the presence of 2 witnesses and an authorized individual that the document is the testator's will and that he or she knows its contents. The testator need not inform the witnesses or the authorized person of the will's contents.

(c) In the witnesses' and the authorized individual's presence, the testator shall sign the will or, if the testator has previously signed the will, shall acknowledge his or her signature.

(d) If the testator is unable to sign the international will, the absence of the testator's signature does not affect the will's validity if the testator indicates the reason for the inability and the authorized individual makes note of the reason on the will. In such a case, it is permissible, but not required, for another individual present, including a witness or the authorized individual, to sign the testator's name at the testator's direction, which act the authorized individual shall also note on the will.

(e) The witnesses and the authorized individual shall there and then attest the will by signing in the presence of the testator.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2954 Form and procedure; additional recommendations.

Sec. 2954. (1) To further assure an international will's acceptance, in addition to the section 2953 requirements, all of the following are recommended regarding form and procedure:

(a) The testator's, witnesses', and authorized individual's signatures should be placed at the end of the will. If the will consists of several sheets, the testator should sign each sheet. If the testator is unable to sign, the individual signing on the testator's behalf should sign each sheet or, if there is no such individual, the authorized individual should sign each sheet. In addition, each sheet should be consecutively numbered.

(b) The will's date is the date of its signature by the authorized individual. The authorized individual should note that date at the end of the will.

(c) The authorized individual should ask the testator whether he or she wishes to make a declaration concerning the will's safekeeping. If so and at the testator's express request, the place where the testator intends to have the will kept should be mentioned in the certificate provided for in section 2955.

(2) A will executed in compliance with section 2953 is not invalid merely because it does not comply with this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2955 Certificate.

Sec. 2955. The authorized individual shall attach to the will a certificate signed by the authorized individual establishing that the will complies with the requirements of this part for valid execution of an international will. The authorized individual shall keep a copy of the certificate and deliver another to the testator. The certificate must be in substantially the following form, except the provisions of the form that are optional provisions need only be included if the circumstances of the will render them applicable:

CERTIFICATE

(Convention of October 26, 1973)

1. I, _____,
(Name, address and capacity)
a person authorized to act in connection with international wills
2. Certify that on _____ at _____
(Date) (Place)
3. (Testator) _____
(Name, address, date and place of birth)
in my presence and that of the witnesses
4. (a) _____
(Name, address, date and place of birth)
(b) _____
(Name, address, date and place of birth)

has declared that the attached document is his (or her) will and

that he (or she) knows the contents thereof.

5. I furthermore certify that:

6. (a) In my presence and in that of the witnesses (1) the testator has signed the will or has acknowledged his (or her) signature previously affixed. * following a declaration of the testator stating that he (or she) (2) was unable to sign his (or her) will for the following reason _____, I have mentioned this declaration on the will * and the signature has been affixed by

(Name and address)

7. (b) The witnesses and I have signed the will;

8. *(c) Each page of the will has been signed by _____ and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) The witnesses have met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) The testator has requested me to include the following statement concerning the safekeeping of his (or her) will:

12. PLACE OF EXECUTION

13. DATE

14. SIGNATURE and, if necessary, SEAL

* to be completed if appropriate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2956 Effect of certificate.

Sec. 2956. In the absence of evidence to the contrary, the authorized individual's certificate is conclusive of an international will's validity under this part. The absence or irregularity of a certificate does not affect the validity of a will under this part.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2957 Revocation.

Sec. 2957. An international will is subject to the ordinary rules of revocation of wills.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2958 Source and construction.

Sec. 2958. Sections 2951 to 2957 derive from "Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will". In interpreting and applying this part, regard shall be had to its international origin and to the need for uniformity in its interpretation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2959 Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Sec. 2959. An individual who is admitted to practice law before the courts of this state and who is in good standing as an active law practitioner of this state is an authorized individual empowered to supervise the execution of an international will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC